

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE EASTERN DISTRICT OF TEXAS:**

**Argument**

**I. This Action Should be Dismissed Under Fed. R. Civ. P. 12(b)(7)**

Rule 12(b)(7) provides for dismissal for “failure to join a party under Rule 19.” Fed. R. Civ. P. 12(b)(7). As set forth in the two Motions to Dismiss or Transfer, filed on July 6, 2004 by all defendants in this action other than Onkyo (the “Motions to Dismiss or Transfer”),<sup>1</sup> plaintiff cannot maintain this action because it owns only one-half of the patent in suit and the other co-owner, GI, has not been made a party. Onkyo adopts and incorporates by reference the arguments made by the other defendants in the pending Motions to Dismiss or Transfer.

**II. In the Alternative, this Action Should be Transferred to Delaware**

28 U.S.C. § 1404(a) provides: “For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” As discussed in the pending Motions to Dismiss or Transfer, the action should be transferred to the District of Delaware, pursuant to Section 1404(a), so that it can be consolidated with the action entitled *AGFA v. Compression Labs, Inc.*, 04-CV-818, which, unlike the case at bar, does include the indispensable party, GI, and will afford complete relief to all interested parties.

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<sup>1</sup> Onkyo had not been served with the Summons and Complaint at the time the other Defendants moved to dismiss.

**Conclusion**

For the reasons set forth above and in the two pending Motions to Dismiss or Transfer, this action should be dismissed or, alternatively, transferred to the District of Delaware.

On behalf of Onkyo U.S.A. Corporation

/s/ Scott E. Stevens

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**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was filed electronically in compliance with Local Rule CV-5(a). As such, this motion was served on all counsel who are deemed. to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed R. Civ. P. 5(d) and Local Rule CV-5(e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by certified mail, return receipt requested, on this the 23rd day of August, 2004.

/s/ Scott E. Stevens

Scott E. Stevens